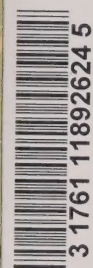


A GUIDE TO THE PLANNING ACT

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Ontario

Ministry of Housing

In addition to the final report of the Planning Act Review Committee, the following publications are available from the Ontario Government Bookstore, 880 Bay St., Toronto, Ont. M7A 1N8. Cheques or money orders should be made payable to the Treasurer of Ontario.

Background paper 1: Planning Issues: The Public Consultation Program.....	\$3.50
Background paper 2: Operation of Municipal Planning.....	\$1.00
Background paper 3: Municipal Planning and the Natural Environment.....	\$1.25
Background paper 4: Citizen Participation in the Preparation of Municipal Plans.....	\$1.00
Background paper 5: Planning for Small Communities.....	\$.50
A Guide to the Planning Act	\$1.25

A GUIDE TO THE PLANNING ACT

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Ontario

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CAUTION

This guide to the Planning Act is intended to assist in understanding the basic planning legislation in Ontario. It should not be used as an alternative to the actual text of the legislation when accurate reference is required.



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INTRODUCTION

The Planning Act is the major piece of provincial enabling legislation dealing with urban and rural planning at the municipal level. Municipal councils and other local government agencies may only act in the context of the authority which is given to them by provincial legislation. This guide to The Planning Act is intended to help the non-professional to get acquainted with the planning framework in Ontario. The Act itself can be quite confusing to the uninitiated because it is written in precise legal language which can be interpreted in the courts. This guide covers approximately the same subjects as the Act, sometimes in slightly different order, but in a language hopefully more suited to the average citizen.

The government of Ontario is currently engaged in a major review of The Planning Act, which may result in new legislation. One of the most important purposes of this guide will be to help people understand the existing legislation and thereby promote informed discussion of the eventual proposals for a new Act or changes to the existing Act.


The two most common planning documents currently in use in Ontario are the official plan and the zoning by-law. These are the documents containing the policy for development and the regulations affecting private property, whereby those policies are implemented. The first five topic headings in this guide deal with the basic framework for planning and zoning. Other major headings are those dealing with existing development: redevelopment, maintenance and occupancy controls and demolition control; and those dealing with the division of land, subdivisions and the land division committee.

A committee of adjustment may have powers dealing with both zoning and land division. A section dealing with building by-laws is still in the Act but for most practical purposes it has been superseded by The Ontario Building Code.

In addition to paraphrasing the Act, the main contribution of this guide may be in providing an index and a table of contents, applicable to both the guide and the Act itself. Since planning affects a very wide variety of activities and services, from roads and sewers to social services, many planning-related topics are covered in legislation other than The Planning Act. A reader seeking information on such a topic may find assistance in "A Planner's Reference to Legislation in Ontario", available from the Ontario Government Bookstore for \$2.00.

The Minister responsible for the Planning Act is the Minister of Housing. Any reference to "the Minister" means the Minister of Housing.

(O. Reg. 57/75)



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PLANNING AREA (2)

Designation (2,3)

A Planning Area is an area officially designated as such by the Minister. The designation of a planning area usually occurs at the request of a local municipal council and frequently the area coincides with the area of a municipality but in some instances, only a portion of a municipality.

Joint Planning Area (1(c) and 2(2))

A municipal boundary does not always enclose the most suitable area for planning purposes; a planning area may therefore comprise two or more municipalities or parts of municipalities in a joint planning area.

In Unorganized Territory (2(2) and 2(3))

Territory without municipal organization may also be designated as a planning area or may be included in a planning area with an adjacent organized municipality. (Most of the sparsely populated north part of the province is unorganized territory.)

Subsidiary Planning Area (2(4) and 2(5))

A planning area located entirely or partially within one or more other planning areas is a subsidiary planning area. For example, the Scarborough Planning Area is a subsidiary planning area in the Metropolitan Toronto Planning Area.

Designated Municipality (2(6))

When a joint planning area is formed, the Minister names the so-called "designated municipality". The council of the designated municipality is responsible for appointing a planning board.

Dissolution or Alteration of Planning Area (2(8))

The Minister may dissolve or alter the boundaries of a planning area, but where an official plan is in effect, it remains in effect until its status is changed in spite of what may be done to eliminate or change the planning area.

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PLANNING BOARD (3-12, 30a)

Appointments, Composition ((3, 4(1), 4(2), 4(6))

A planning board is composed of five, seven or nine members.* The head of council of the municipality is always a member, except if the planning area is a joint planning area, i.e., made up of two or more municipalities, when it is only the head of council of the designated municipality who is automatically a member. The other members are appointed by the council of the designated municipality; they may be municipal councillors or any other persons, provided they are not employees of a municipality within or partly within the planning area or employees of a local board. Employees of a board of education or school board are eligible, however.

Where a planning area includes unorganized territory every appointment to the planning board must be approved by the Minister of Housing.

Term of Office (4(4) - 4(7))

Members of the planning board who are council members are appointed annually. The others are appointed for three year terms in such a manner that the terms of one third of their number expire each year. In order to achieve this, approximately one third of the initial appointments are for one year, one third for two years and one third for three years.

If a member is elected to the council, he ceases to be a member of the planning board, but is eligible to be appointed annually on the basis of his new status as a councillor.

If a member of the planning board ceases to be a member before the expiration of his term, the council of the designated municipality must appoint a replacement for the unexpired portion of his term.

Quorum (4(8))

A majority of the members of a planning board constitutes a quorum for holding meetings and conducting the business of the board.

* In special circumstances,
the Minister may vary these rules -
see Special Provisions (5) on page 5

Officers (4(9), 4(10))

The planning board must elect a chairman and a vice-chairman from their number and must appoint a secretary-treasurer, who may be a member of the planning board, but does not have to be.

Special Provisions (5)

In order to accommodate the special needs of any planning area, the Minister may vary the rules relative to planning board appointments, procedures, terms of office, etc..

Execution of Documents (6)

All official planning board documents must be signed by the chairman or the vice-chairman and the secretary-treasurer. The corporate seal of the planning board also must be affixed.

Assessment Information (7)

It is not an offence to disclose information from the assessment rolls to a planning board member or employee, who declares that the information is required in the course of his duties. (Without this clause, Section 78 of The Assessment Act would prohibit such disclosures.)

If a planning board member or employee subsequently reveals such information to anyone not similarly entitled to know it, in the course of his duties, he may be fined up to \$200 or imprisoned. The information may be divulged, however, by a witness in a court or arbitration proceeding.

Finances (8)

Planning board must submit an estimate of its financial requirements to the municipal council each year. Council may amend the estimate and pay the secretary-treasurer for deposit in an account.

In the case of a joint planning area, an estimate is sent to each of the member municipalities, together with a statement showing what proportion of the total is chargeable to each municipality. If the estimates are approved, or amended and approved, by the councils representing more than one-half the population of the planning area, the estimates are binding on all the municipalities in the planning

area. When the estimates have been approved, the planning board must notify each municipality of the total approved and the amount charged to it, based on the apportionment circulated previously.

If any municipality is not satisfied with the apportionment, it may notify the planning board and the Ontario Municipal Board, within 15 days after receiving the approved estimates. The Ontario Municipal Board will then hold a hearing and settle the apportionment. Its decision is final.

Where all or most of the municipalities in a county are included in one planning area, the Minister may authorize the county council to act on behalf of the municipalities for the purposes of planning board financing. The payments may be recovered from the municipalities through the county rates.

Remuneration (9)

A planning board may provide for the payment of salaries, expenses or allowances for its members and must include the financial requirements for this purpose in its estimates.

Grants (10)

Grants of money may be made by municipalities or a county to a planning board. This would be in addition to monies paid to the planning board by a municipality under section 8.

Audit - Joint Planning Board (11)

The transactions of a joint planning board must be audited by an auditor of the designated municipality.

Duties of Planning Boards (12(1), (30a)

The planning board is expected to advise the municipal council on the planning and development of the planning area. Its most important task is preparing an official plan for the planning area and recommending this plan to the council for adoption.

Normally, all applications for zoning by-law amendments, official plan amendments and subdivision approvals are also referred to the

planning board by council for a recommendation. In addition, the planning board may undertake planning studies, hold public meetings, conduct surveys, and consult local boards with a view to recommending appropriate planning policies to the council.

In a territorial district, a planning board may also be responsible for the granting of consent applications (See "Consent" on page 23) provided the Minister has delegated that authority to the planning board. (See "Delegation of consent-granting power to a planning board" on page 59).

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OFFICIAL PLAN (12-21)

General Description (12)

An official plan is a document in which the planning and development policies of the municipality (or municipalities) in a planning area are described. The policies may also affect development under the jurisdiction of a local board.

It is made up of maps and a text. One of the maps is likely to be a land use plan, showing where industry and commerce are expected to locate, and which areas are intended to be reserved for residential uses. The corresponding text explains what the various designations on the map really mean. For instance, within the broad category of residential use, the text would clarify at what density development could occur and whether parks, schools, local stores, apartment buildings, public utilities and home occupations are included. It might also specify under what circumstances such uses would be permitted.

Other main portions typically deal with the road network, the water supply and sewerage systems to service development, the staging of development areas, the distribution of different types of parks throughout the planning area, etc..

The official plan is not intended to deal with details, but with general principles. It is a statement of how the municipality intends to proceed to control development and where it proposes to install public works. By itself, it has no direct effect on how an individual may use his property. However, zoning and other by-laws must, by law, conform to the official plan. Indirectly, the official plan is of great significance, by setting out the general principles governing the controls that may be imposed.

Adoption and Approval of the Official Plan (12(2), 13, 14)

The planning board approves the official plan by a vote of a majority of all the members and recommends it to the council of the municipality for adoption. It should be noted that in the case of the approval of the official plan, the quorum rule set out in section 4(8)(page 6), does not apply. An affirmative vote of an absolute majority of the whole planning board is required.

The council of the municipality adopts the plan by by-law, as submitted, or adopts it with amendments.

In the case of a joint planning area, the official plan is recommended by the planning board to the designated* municipality for adoption. Other councils of municipalities in the planning area may adopt the official plan if the designated municipality consents thereto. If the council of the designated municipality fails to adopt the official plan, the council of another municipality in the planning area may adopt the plan after waiting ninety days from the date the plan was recommended for approval by the planning board.

Upon adoption by council, the official plan is then submitted to the Minister for approval. The Minister refers the plan for comment to other ministries and agencies and to any adjacent municipality that may be affected. If any modifications appear desirable, the Minister will attempt to negotiate them with the municipality that submitted the plan; but he may make whatever changes he considers necessary before approving the plan. When the plan is approved by the Minister, it becomes the Official Plan of the Planning Area.

The Minister may approve any part of the official plan instead of the whole plan and may from time to time approve additional parts. This enables the Minister to approve those portions of the plan which are not controversial, while discussions are in progress regarding more controversial items. The approval of the bulk of the plan is thereby not delayed by one or two controversial items.

Referring the Official Plan to the O.M.B. (15)

The Minister on his own initiative may refer any part of the official plan to the Ontario Municipal Board (O.M.B.).

On the other hand, an individual may ask the Minister to refer an official plan or any part of it to the O.M.B. This request will normally be granted unless the Minister judges it to be clearly frivolous or with the intent to delay.

When the plan is taken out of the Minister's hands by referral, the approval of the O.M.B. has the same force as if it were given by the Minister himself.

* See page 2.

When the Minister refers part of the official plan to the O.M.B., he may approve the remainder and eventually the two portions, if approved, become the Official Plan of the Planning Area.

Public Access to the Official Plan (16)

Certified copies of the official plan must be available for public inspection in the municipal clerk's office, in the local registry office, and in the Ministry of Housing's Official Plans Branch in Toronto.

Official Plan Amendment or Repeal (17)

It is not expected that an official plan should remain unchanged forever. The Act provides for amendments to an official plan, each amendment being a legal document just as the official plan itself.

An amendment to an official plan may represent a change in policy with respect to the development of the planning area. For example, if a decision is taken to permit industrial development in an area shown as "Rural" on the land use map, an amendment to the official plan would be required before the zoning by-law may be amended to permit the industrial use.

Some amendments to the official plan do not introduce a change so much as a refinement of the existing policy. For example, what is called a secondary plan may be prepared for an area designated for residential use. The secondary plan would show more details about the types of dwellings to be permitted in different parts of the neighbourhood (single-family, semi-detached, town-houses, walk-up apartments, high-rise apartments, etc.) and the location of parks, schools and other neighbourhood facilities. The secondary plan would be added, in most instances, to the official plan as an amendment.

All the provisions applicable to the official plan apply also to each amendment to the plan, or to a repeal. "Repeal" means that an existing official plan is replaced by a completely new plan.

When an amendment or repeal is initiated by a council the Minister may consult the planning board and if it does not concur with the amendment or repeal, the Minister can not approve the amendment or repeal unless it has the support of at least two thirds of the council.

An individual may ask council to amend the official plan and if council refuses or takes no action within 30 days, the applicant may ask the Minister to refer the proposal to the Ontario Municipal Board. If the Minister agrees to refer the proposal, the Board after holding a public hearing, may either reject it or on the other hand, direct the council to amend the plan.

If the Minister does not agree with the request from the individual to amend the official plan, he may refuse to refer the request to the O.M.B. and in that case that would end the matter.

Official Plan in Unorganized Territory (18)

For all matters related to the official plan, when a planning area is defined in unorganized territory, the Minister has all the powers and responsibilities of a municipal council.

Legal Effect of an Official Plan (19(1), 22(6), 31, 33(4), 35a(2))

Once an official plan is approved by the Minister, no public work may be undertaken by a council or local board and no by-law may be passed for any purpose that does not conform with the official plan. Moreover, the Minister may not approve a redevelopment plan unless it conforms to the official plan. No committee of adjustment has jurisdiction to grant consents to land severances unless the municipality has an approved official plan. Also, in considering a proposed plan of subdivision, the Minister must have regard to the official plan, if there is one. Council may not introduce site plan control unless there is an approved official plan.

Zoning Amendment Implementing Official Plan Amendment (19(2))

If a proposed development requires amendments to both the official plan and the restricted area (zoning) by-law, it is not necessary to wait until the official plan amendment is approved by the Minister before council passes the implementing zoning by-law amendment. As long as council does not adopt the zoning amendment before the official plan amendment, the processing of both documents may occur concurrently. (Without this exception clause, a careful reading of section 19(1) would require the processing of the official plan amendment to be completed before council could legally pass the corresponding zoning amendment.)

By-Law Deemed to Conform to Official Plan 19(3), 19(4)

If there is any doubt about the conformity of a by-law with the official plan, council may apply to the Ontario Municipal Board to have the by-law deemed to conform and to declare so by order. The application is made in the same manner as for a zoning by-law approval.

Land Acquisition to Implement the Official Plan (21)

A municipality may acquire and hold land for the purpose of developing any feature of the official plan, provided that it has an official plan with provisions relating to the acquisition of land, and those provisions have been approved since the coming into force of this section of The Planning Act in 1974.

In a joint planning area, the designated municipality may, with the Minister's approval, exercise the powers described above in respect of land acquisition. The acquired land need not necessarily be within its own municipal boundaries. Any county or municipality may contribute toward the cost of acquiring land under this section.

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ZONING BY-LAW (35)

General 35(1)

The terms "zoning by-law", "restricted area by-law" and "land use by-law" essentially mean the same thing: a by-law restricting the use of land and the manner in which buildings or structures are located on a property. The restrictions on the use of land are designed to keep incompatible uses separate. For instance, factories will be prohibited from residential areas and houses will not be allowed in industrial areas. The by-law may be quite specific in differentiating between permitted and prohibited uses. A dry cleaning pick-up station, for example, may be permitted in a commercial zone whereas the actual dry cleaning operation may be prohibited. Further restrictions may specify the types of dwellings permitted in each "zone", the parking and loading requirements, the maximum height, the minimum set-back from the street, the minimum "side-yard", which is the distance between the building and the side lot line, the minimum or maximum floor area, etc..

"Density" is typically one of the features regulated in a zoning by-law. When applied to residential development, it means the number of dwellings per acre (or per hectare if it is expressed in metric units). Alternatively, a density may be expressed as a number of square feet of floor area per unit of land area. The number expressing that ratio is called the "floor space index". "High density" means a large number of dwelling units in relation to the land area; this usually means high-rise apartments, but the two terms are not synonymous: a "high density" may be achieved if small houses or low-rise apartments are built close together.

Development may also be regulated on the basis of the availability of municipal services such as water supply and sewerage facilities.

The Difference Between a Zoning By-Law and an Official Plan

An official plan deals with general policies of the municipality concerning future growth. Thus, the plan shows such things as the areas that will be covered by buildings and roads in the future and the general separation of different land uses. It also likely will show in what order different vacant areas will be allowed to develop and where new major roads will have to be built to handle traffic generated by more development.

A zoning by-law on the other hand, implements that intent by stating quite specifically what may or may not be done on individual parcels of private property. Whereas an official plan may show general outlines of different land use areas, the zoning by-law map shows these boundaries very precisely and all its regulations should be stated very exactly. If a proposed development does not comply with all the provisions of the zoning by-law, an amendment to the by-law may be required before the development may proceed. Some zoning by-law amendments require no amendment to the official plan, because they are not in conflict with the municipality's general policies. In other cases, a zoning amendment may involve a policy change and an amendment to the official plan would need to be initiated before the by-law could be amended.

Legal Non-Conforming Uses 35(7)

A zoning by-law only applies to development occurring after the passage of the by-law. Existing uses may continue in existence as long as they remain unchanged. However, any change in use or modification to an existing building or structure must conform to the zoning by-law, or must be sanctioned by the committee of adjustment. (See page 36).

If a building permit has been obtained prior to the passage of a zoning by-law, the by-law may not prevent development in accordance with the permit, provided construction is started within 2 years after the passing of the by-law and completed within a reasonable time.

Ontario Municipal Board Approval

Legal Requirement for O.M.B. Approval 35(9), (10)

All zoning by-laws and amendments must be submitted to the Ontario Municipal Board for approval and do not come into force until approval has been granted. However, in the interim period between the passing of a by-law by council and its approval by the O.M.B. it is normal practice for a municipality to withhold a building permit for development that is in conflict with a zoning by-law, as soon as the by-law has been passed by council. As long as the municipality proceeds to seek approval of the by-law without undue delay, a court is not likely to force it to issue a permit. When an amendment to the zoning by-law is passed, permitting a use which was not permitted prior to the passing of the amendment, no building permit should be issued until the by-law is approved by the O.M.B.

Notice of Application for O.M.B. Approval 35(11), (13) and (17)

When a by-law is passed by council, notice of the application for Ontario Municipal Board approval must be circulated in accordance with the Board's Rules of Procedure. For a new by-law covering the whole municipality, this usually involves sending a copy to all of the rate-payers in the municipality. For an amendment, notification is normally sent to persons living within 400 feet of the property affected by the by-law. Anyone objecting to the by-law may do so by writing to the municipal clerk within a stated time limit which is usually 14 days. Every application to the Board for approval of a zoning by-law must state whether or not the affected land is covered by an official plan.

O.M.B. Hearing 35(12), (14), (24) and (25)

If one or more objections are received, the Ontario Municipal Board almost always holds a public hearing, although it may dispense with a hearing if the written objections are considered insufficient. (The legislation appears to provide for automatic approval if no objection is lodged with the municipal clerk within the prescribed time limit. This provision is misleading, however, because it only comes into force when a cabinet regulation is introduced prescribing the manner and form of notice; to date no such regulation has been issued and therefore all zoning by-laws must still be approved by the O.M.B.)

Amendment of By-Law Pending Approval 35(18)

A hearing on a zoning application may be adjourned and an amendment may be passed by council and circulated or not circulated, depending on the Ontario Municipal Board's direction. The Board may then approve the amended by-law application. This sometimes allows compromise solutions to be found to satisfy objectors, at least in part, without turning down the entire application.

The Board's Approval 35(19), (20), (23)

The Ontario Municipal Board's approval may apply to the whole or any part of a zoning by-law. The Board has the option of approving a by-law for a limited period of time and of extending the temporary approval upon application. The approval of the Ontario Municipal Board only becomes effective upon the issuance by the Board of its formal order.

A copy of the Board's decision must be supplied to the applicant and to each person who appeared at the hearing and who filed a written request with the Board for a notice of the decision. The applicant is usually the municipality, but may also be a person who appealed to the Board, as described below.

Approved By-Law is Deemed to Conform 35(28)

Any zoning by-law approved by the O.M.B. is deemed conclusively to be in conformity with the official plan then in effect in the municipality. This provision is included in the Act to prevent any arguments developing after the by-law has been approved by the Board as to whether there is conflict with the official plan.

Appeal by Citizen for Amendment 35(22)

If a municipal council refuses to pass an amendment to the zoning by-law or takes no action within a month of receiving an application, a citizen seeking an amendment may appeal to the Ontario Municipal Board. The Board will hold a hearing and either dismiss the appeal, or issue an order directing the council to pass an amendment.

Certificate of Occupancy 35(4)

A zoning by-law may provide for a certificate of occupancy, without which no change may be made in the type of use of any land or building. If the proposed use is permitted by the by-law a certificate of occupancy may not be refused. This subsection allows a municipality to keep track of proposed changes in use of land and buildings so that new uses not permitted by the by-law can be prevented from establishing.

Acquisition and Disposition of Non-Conforming Lands 35(6)

A municipal council may acquire land, buildings or structures that do not conform to the zoning by-law provisions and it may dispose of or exchange these properties. Because of the expense, this is not often done, but an example would be the acquisition by the municipality of an industrial plant located in a residential area.

Restrictions on Boundary Highways 35(8)

A municipality having zoned land on one side of a highway along its border may apply to the Ontario Municipal Board to have lands on the other side of that highway made subject to similar zoning restrictions if the adjoining municipality refuses or neglects to pass a corresponding by-law applicable to those lands.

Extension or Enlargement of a Non-Conforming Use 35(21)

A zoning by-law may be amended, with O.M.B. approval, to permit the extension or enlargement of a legal non-conforming use, i.e., a prohibited use which existed legally prior to the passing of the zoning by-law, and which therefore has a right to continue in existence. Such extension may be permitted even on land which was not under the same ownership as the non-conforming use at the time the by-law was passed.

Use of Vacant Land for Parking 35(29) - (32)

A municipal council may pass by-laws to permit the temporary use of vacant land for the parking of vehicles, although such use may otherwise be prohibited by the zoning by-law. The parking use does not thereby acquire the rights of a legal non-conforming use (see section 35(7)) when the temporary by-law runs out. The parking provided on this temporary basis does not count as part of the parking that may be required by the zoning by-law for an adjacent use. This provision is to enable a municipality to permit land which is now vacant, but which eventually is intended to be built on, to be used temporarily as a commercial parking lot.

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SITE PLAN CONTROL 35a

General 35a(2)-(5)

Where there is an official plan in effect in a municipality, the council may pass a by-law whereby any prospective developer may be required to submit a site plan with his application and to enter into an agreement with the municipality regarding certain on-site features of the development. The by-law may apply to the entire municipality or to a portion of it and may relate to such things as:

- road widening
- access ramps and curbing
- parking areas, including their surfacing
- pedestrian walkways
- grading of the lot for storm drainage
- easements
- floodlighting
- landscaping
- garbage storage and collection areas
- snow removal

The by-law may require not only the provision of facilities but also their future maintenance. Any agreement between the municipality and the developer may be registered against the land so that it will bind subsequent owners. A site plan control by-law must be approved by the Ontario Municipal Board in the same manner as the zoning by-law, but the agreements are not subject to such approval.

Appeal by the Applicant (35a(6))

If a prospective developer is not satisfied with the agreement which the municipality wishes to impose on him as a condition of development, or if the municipality fails to approve his site plans within thirty days, or refuses to enter into an agreement, he may appeal to the Ontario Municipal Board by giving written notice to the secretary of the Board and the clerk of the municipality. The Board must then decide the matter and may require the municipality to enter into an agreement. The Board's decision is final.

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SUBDIVISION (29)

Subdivision Control 29(2)

If a person wishes to divide land into two or more parcels for the purpose of selling, it is necessary either to register a plan of subdivision on the land or else to obtain what is called a consent to a land severance. This requirement applies throughout Ontario but is not applicable if the land is being acquired or disposed of by a federal, provincial, regional, district, county or local municipal government or it is acquired for the construction of a transmission line, as defined in the Ontario Energy Board Act. (A hydro line, a pipeline, etc..) If the entire property is being sold at one time to one purchaser, the requirement does not apply, since the land remains essentially a single parcel, i.e., the seller does not retain any abutting land.

Registered Plan of Subdivision

For the purposes of The Planning Act, a registered plan of subdivision is a plan approved by the Minister* and registered under The Registry Act or Land Titles Act. In addition, some older plans, most of which were registered before the introduction of The Planning Act in 1946, may also qualify as registered plans. A plan of subdivision essentially shows lots on which houses or other buildings are to be erected as well as streets, parks etc..

Consent (30, 30a, 31, 42)

A consent to a land severance is an authorization to separate a parcel of land from another adjoining parcel in order to sell it or mortgage it or lease it for more than 21 years. A consent can be obtained from a committee of adjustment, a land division committee, a planning board or the Minister, depending on the jurisdiction in the area where the parcel is situated. The Minister has the authority to grant a consent in unorganized territory and wherever neither a committee of adjustment nor a land division committee have jurisdiction.

* or exceptionally by the Ontario Municipal Board. Another possible approving authority is a Regional Municipality to which the Minister's power has been delegated. (see pages 63 and 57).

He may delegate his consent-granting authority to a planning board in a territorial district, i.e. an area in the north without county or regional government, such as the District of Algoma, etc.. Most of southern Ontario has either a committee of adjustment, which acts only for one municipality, or a land division committee which acts for a county or regional government.

Part-Lot Control 29(4)

It is not permitted to sell a portion of a lot on a registered plan of subdivision except by obtaining a consent to a land severance. The same exceptions apply as with subdivision control with regard to government transactions and transmission lines and with regard to the disposal of an entire ownership. In addition, utility lines are also exempt from part-lot control.

Plans Excluded from Part-Lot Control 29(5), (10)

A municipal council may, by by-law, designate a certain plan or plans of subdivision where part-lot control does not apply. The by-law must be approved by the Minister of Housing but it may be repealed or amended to delete part of the affected lands without the Minister's approval. A certified copy of every part-lot control by-law must be registered by the municipal clerk in the local registry or land titles office.

Certain plans of subdivision are sometimes exempted from part-lot control, when, for example, semi-detached houses are to be built which require lots to be split in half so that each portion of the building will have its own parcel.

Deeming Plans Not Registered 29(3)

Some plans of subdivision were registered a long time ago, some as long as 150 years, and their design or lot sizes may not be appropriate to fit in with current planning requirements. A municipal council is empowered to pass a by-law deeming any plan of subdivision at least eight years old not to be registered for the purpose of subdivision control. The owner of the land is thereby required to obtain approval for a new plan or else to obtain a consent before he can sell any portion of it.

Copies of Deeming By-Law to Minister's and Registry Offices 29(8-10)

A certified copy or duplicate of every deeming by-law must be lodged by the municipal clerk in the Minister's office and another must be registered by him in the local registry office or land titles office.

Notice of Deeming By-Law 29(11)

The municipal clerk must send notice of a deeming by-law by registered mail to every landowner to which the by-law applies. The notice must be sent to the last known address of such owners appearing in the last revised assessment roll.

Simultaneous Conveyances, Power of Appointment, Etc. 29(5a), (5b)

Over the years, various attempts have been made by individuals to subdivide land without going through the approval process required by The Planning Act. In order to achieve this, they convinced the courts that certain transactions did not constitute subdivision for the purpose of The Planning Act. In response to these "loop-holes", the Act now refers to forms of conveying land other than by simple straightforward sale. The names or descriptions of these techniques are unfamiliar to most people. They include such terms as "power of appointment", "partial discharge", and "simultaneous conveyance". The Act now includes them all as forms of conveying land subject to subdivision control and part-lot control and, therefore, requiring approval.

Conveyance Contrary to the Provisions of this Act 29(7)

An attempted conveyance contrary to the provisions of this section of The Planning Act is illegal and any such transaction would not be valid. However, an agreement to purchase subject to the condition that the land be legally separated in accordance with the Act would be valid.

A.R.D.A. Lands Excepted 29(5d)

Subdivision control does not apply to lands purchased or leased from the Agricultural Rehabilitation and Development Directorate of Ontario, provided the land is all the land acquired by the Directorate under a registered deed or transfer.

Consent to Lapse After Two Years 29(6)

Normally, a consent lapses two years after it has been granted by the Minister or after the certificate of consent has been given by a committee of adjustment, land division committee or planning board. (See Section 42,

subsection 20.) However, the Minister or the committee or board may provide for an earlier lapsing if they see fit.

Consent Subject to Similar Scrutiny and Conditions as Subdivision 29(12), (12a)

In dealing with a consent application, the committee of adjustment, the land division committee, the planning board or the Minister have the same powers and must have regard to the same matters as the Minister with respect to a plan of subdivision. These matters are described in section 33(4, 5 and 6) of the Act. The powers include the imposition of conditions, which must be fulfilled before the consent is granted. Every municipality may enter into agreements as a condition of granting a consent, and these agreements may be registered against the land.

Cash in Lieu of Park Dedication 29(13)

Parkland received by a municipality as a condition of a consent may be sold at any time. The proceeds from the sale of such lands as well as cash received instead of a park dedication must be placed in a special account and are subject to the same conditions as cash received in lieu of parkland from a subdivision. (See section 33(11), page 28 and section 35b, page 42).

Minister's Order to Legalize Conveyances (Validation) 29a

In order to permit exceptions in certain instances where the Minister deems that extenuating circumstances exist, the Minister may issue an order whereby conveyances of certain lands may be legalized, although they may have contravened the subdivision control legislation. The Minister may only issue such an order at the request by by-law of the municipal council. The municipality may impose any conditions on the lands that it sees fit. This type of exception is popularly called "validation".

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SUBDIVISION PLAN APPROVAL (33)

Application for Approval 33(1), (2)

When land is to be subdivided into lots by means of a registered plan, the owner must make application to the Minister* for approval. A draft plan is first submitted, showing the outline of the lands, the location of any proposed roads, the approximate dimensions of the proposed lots and other information necessary to permit an evaluation of the proposal.

Review of Application 33(3), (4)

Upon receipt, an application is given an initial examination and, if it is not in conflict with an official plan or clearly contrary to a provincial policy, it is circulated to the local municipality and to other ministries and agencies which may have an interest in, or be affected by, the proposal.

Draft Approval 33(5), (6)

When he is satisfied with the draft plan, the Minister may give it draft approval, or "approval in principle" subject to whatever conditions are deemed appropriate for final approval and subsequent registration. The conditions may include, among other matters, that 5% of the land area be given for park purposes, that sufficient land be dedicated for roads and road widenings, and that the owner of the land enter into a subdivision agreement with the municipality or with the Minister. A subdivision agreement may be registered against the land and may be enforced against the owner or any subsequent owners.

Park Land Conveyance 33(8) - (11)

Instead of taking 5% of the land area for park purposes, the municipality may be authorized by the Minister to accept the cash value of 5% of the area of the subdivision. This may be done when there already is enough existing parkland in the general area of the subdivision.

* or delegated municipality (See page 57: Delegation of Minister's Powers).

All land conveyed to the municipality for park purposes must be used for park purposes or such other public purpose, such as the site for an arena, authorized by the Minister. However, it may be sold, with the Minister's approval, within the first five years and without the Minister's approval after that time. All cash received by the municipality instead of parkland must be kept in a special parks account, to which the municipality may add any monies appropriated for parks in the estimates. The funds in this account may only be used for parkland acquisition or, with the Minister's approval, for the acquisition of land for other public purposes or for the development or improvement of parklands (see also Section 35b: By-Law re Parkland Conveyance).

Draft Approval May Be Withdrawn 33(12), (12a)

The Minister may at his discretion withdraw draft approval or change the conditions of approval at any time prior to his final approval of the plan for registration.

If a draft plan has not received final approval within three years of draft approval, it automatically lapses unless the Minister specifically extends the duration of draft approval, before it has lapsed.

Reference of Conditions to the O.M.B. 33(7)

If either the owner or the municipality are not satisfied with any of the conditions imposed by the Minister on the approval of a plan of subdivision, a referral to the Ontario Municipal Board may be obtained by serving written notice on the secretary of the Board and on the Minister. The Board will then hear and determine the question as to the condition or conditions referred to it and the Board's decision has the same force as it if were the Minister's.

Final Approval 33(13) - (15)

When the draft plan is approved, the subdivider may proceed to lay out the roads and lots on the ground and to prepare an accurate final plan certified by an Ontario land surveyor. If the Minister is satisfied that the plan conforms to the approved draft plan and that the conditions are or will be fulfilled, he may approve the plan and it may then be tendered for registration.

Approval may be withdrawn and a new application may be required if the plan is not registered within one month of final approval.

Linen Duplicates 33(16)

One or two linen duplicates of the plan are required to be submitted to the registrar or master of titles when tendering the plan for registration. These are endorsed by the registrar or master, showing the plan number and the date of registration and are delivered by him to the Minister.

LAND DIVISION COMMITTEE

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LAND DIVISION COMMITTEE (30), (30b), (45)

Establishment 30(1)*

If one or more municipalities in a county (or in a regional district or metropolitan municipality) are without a committee of adjustment which was constituted prior to June 15, 1970, the Minister may notify the county council (or the regional, district or metropolitan council) that they must establish a land division committee, composed of at least three members.

Eligibility for Membership** 30(2) and (3)

The following categories of persons are not eligible for the land division committee:

- a member of a county council (or regional, district or metropolitan council)
- an employee of a county (or region, district or metropolitan municipality)
- a member of council of a municipality forming part of a county (or region, district or metropolitan area)
- an employee of a municipality forming part of a county (or region, district or metropolitan area)

An employee of a municipality includes an employee of a local board of the municipality but does not include a teacher employed by a board of education or school board.

Power 30(4)

The land division committee has the same power as a committee of adjustment with respect to consents for land severance (Section 42(3)) but only one agency has jurisdiction to exercise that power in any particular area.

Jurisdiction 30(4) and (5)

A land division committee has no jurisdiction to deal with consent applications in any municipality having a properly constituted committee

* See also the subsection on territorial districts on page 33

** Some Regional Acts have different eligibility criteria and allow council members to sit on the committee.

of adjustment with authority to grant severances (or consents) unless the municipality passes a by-law authorizing the land division committee to grant consents, or unless the committee of adjustment is dissolved.

When a municipality passes a by-law authorizing the land division committee to grant consents, the clerk must send by registered mail a certified copy of the by-law to the secretary-treasurer of the committee of adjustment, to the secretary-treasurer of the land division committee and to the Minister, not later than five days after the passing of the by-law.

The jurisdiction to grant consents passes from the committee of adjustment to the land division committee ten days after the passing of the by-law.

Loss of Jurisdiction (31)

If the Minister is of the opinion that a land division committee is not giving consents in the manner contemplated by the Act, he may by order declare that such committee has no further jurisdiction to give consents. The consent-granting authority then passes to the Minister.

Rules of Procedure, Term of Office, Chairman, Employees, Etc. (30(3a), 30(4), 41(5), (7-12), 42(3)-(20), and (45))

A land division committee is subject to the same provisions of the Act as a committee of adjustment in respect to such matters as rules of procedure, terms of office, appointment of a chairman, engaging of staff, remuneration of members, filing of documents, holding of hearings, notices of decisions, appeal procedures, etc..

Territorial District (30b)

The Minister may establish land division committees in territorial districts and may delegate to them his authority for the granting of consents in any defined area. The members of a district land division committee are chosen by a meeting of property owners and tenants in a manner to be prescribed by the Minister in a regulation.

COMMITTEE OF ADJUSTMENT

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COMMITTEE OF ADJUSTMENT (31, 41, 42, 45)

Establishment 41(1), (1a), (12)

Every municipality having a zoning by-law is entitled to establish a committee of adjustment, composed of not less than three members, appointed by the council. A certified copy of the by-law establishing the committee must be sent to the Minister by registered mail and the by-law does not take effect until 30 days after it has been sent.

Eligibility for Membership 41(2), (3)

Anyone is eligible for appointment to the committee of adjustment except a member of the municipal council or an employee of the municipality or of a local board of that municipality. However, a teacher is eligible, even though he or she may be employed by a local school board or board of education.

Term of Office 41(4), (5)

Each member is appointed for a three year term, with the terms of as nearly as possible one third of the members terminating each year. This is achieved by designating members on the first appointment, when the committee is set up, for terms ending on the first of January following the date of appointment, others on the next following first of January and others one year later.

Members hold office until their successors are appointed, and are eligible for reappointment. If a member ceases to be a member before the expiration of his term, the council must appoint another eligible person to serve the unexpired portion of his term.

Quorum 41(6), (7)

Where a committee is composed of three members, two members constitute a quorum, and where a committee is composed of more than three members, three members constitute a quorum. A vacancy in the membership does not impair the powers of the committee or the remaining members, provided there is a quorum.

Chairman 41(8)

The members of the committee must elect one of themselves as chairman. When he is unavailable, another member may be appointed as temporary chairman.

Employees 41(9)

The committee must appoint a secretary-treasurer, who may be one of their number, and may engage staff or consultants.

Records of Official Business 41(11)

The secretary-treasurer is required to maintain a record of all applications and other official business and to make these records available to the public for inspection at all reasonable times.

Rules of Procedure 41(12), 45

In addition to the requirements set out in the Act, the committee must follow the rules of procedure prescribed by the Minister, by regulation.

Powers of the Committee Relative to Zoning 42(1) and (2)

1. Minor Variance

The committee of adjustment may authorize minor variances from the provisions of the zoning by-law or from any other by-law implementing an official plan. A minor variance should only be granted if, in the opinion of the committee, the general intent and purpose of the by-law and the official plan are maintained.

An example of such a minor variance might be permission to build a single family dwelling on a lot that is only 48 feet wide instead of 50 feet that the by-law requires.

2. Extension of a Legal Non-Conforming Use

The committee of adjustment may allow the enlargement or extension of a building or structure that is used for a purpose prohibited by the zoning by-law, provided that use was in existence when the by-law was passed and it continues to be used for the same purpose and in the same manner. This authority is limited to permitting the extension of buildings or structures on land owned and used in connection with the use being expanded, on the day the zoning by-law was passed.

3. Change to Similar or More Compatible Use

The committee of adjustment may permit a legal non-conforming use to be changed to another use that is either similar to the

existing use or more compatible with the uses permitted in the by-law than the existing use. In order to be eligible, the existing use must have been in existence when the by-law was passed and must have continued in the same use until the date of application to the committee.

In this situation a committee might grant permission for a non-conforming dry cleaning establishment to be changed to a drug store.

4. Permitted Uses Defined in General Terms

Where the uses of land, buildings or structures permitted in the zoning by-law are defined in general terms, the committee may decide whether any specific use conforms in their opinion with the uses described in the by-law. Nowadays, this is a little-used clause because by-laws are usually drafted with the permitted uses defined quite specifically. It was common in the past, however, for a by-law simply to state that commercial uses would be permitted in a commercial zone. This often resulted in argument over whether certain uses should actually be considered commercial or whether they really were industrial in nature.

Power of the Committee Relative to Land Severance 42(3), 31

The power to grant a consent to the severance of a parcel of land, resides either with a committee of adjustment, a land division committee, a planning board or the Minister, depending on the circumstances.

It remains with the committee of adjustment if the municipality has an approved official plan*, unless the municipal council passes a by-law authorizing the land division committee to grant consents, or unless the Minister declares by order that the committee of adjustment ceases to have jurisdiction to give consents.

If this jurisdiction has been retained, a committee of adjustment may, upon application, grant a consent to the severance of a parcel of

* The official plan must have been approved by December 31, 1973 for the committee of adjustment to retain the consent granting power.

land, provided that the committee is satisfied that a plan of subdivision is not necessary for the municipality. (Section 29 of the Act introduces subdivision control, whereby no land division may occur except by consent or by plan of subdivision.)

Loss of Jurisdiction (31)

If a municipality had no approved official plan by December 31, 1973, the committee of adjustment ceased to have jurisdiction to grant consents and such power passed to a land division committee or, in a small number of cases in Northern Ontario, to the Minister.

If the Minister is of the opinion that a committee of adjustment is not giving consents in the manner contemplated by the Act, he may by order declare that such committee has no further jurisdiction to give consents.

If a municipality was without an approved official plan and if the committee of adjustment was constituted on or after June 15, 1970, the authority to grant consents was transferred automatically to a land division committee, if one existed in the region, district or metropolitan area. If the committee of adjustment existed prior to June 15, 1970, the Minister has the authority to grant consents if that authority is lost by the committee of adjustment, until the council passes a by-law transferring the authority to the land division committee.

Hearing 42(4), (5), (7)

The hearing on any application must be held within 30 days of receipt of the application by the secretary-treasurer. Notice of the hearing must be given in accordance with the rules of procedure. Every hearing must be held in public and the committee must hear every person who desires to be heard in favour or against the application. The committee may adjourn a hearing and reconvene at some later time.

Decision 42(6), (9)-(12), (14)

Every decision of the committee must be in writing and must set out reasons for the decision. It must be signed by the members who concur in the decision. In order to be valid, a decision must be concurred in by a majority of the members of the committee who heard the application.

A decision may be made subject to any terms and conditions the committee considers advisable (This provision applies specifically to zoning-related decisions; consents for land severances are subject to section 29(12) - see page 26).

The secretary-treasurer must send one copy of each decision, certified by him, to the applicant and to every person who appeared at the hearing and filed with the secretary-treasurer a written request for notice of the decision. The notice must state the last day for appealing the decision to the Ontario Municipal Board.

If the Minister is particularly concerned about the decisions being made by a committee, he may notify it by registered mail that a certified copy of each decision must also be sent to him.

The copy of the notice sent to the Minister must also include the application, the hearing minutes, relevant sketches or maps and a sworn statement that all the required notices of the decision have been sent.

Certificate of Consent 42(20)

When a consent has been granted and the decision is final and binding, after the opportunity for appeal has passed, the secretary-treasurer must give to the applicant a certificate stating that the consent has been given. The certificate is conclusive evidence that the consent has been given and that the provisions of the Act leading to the consent have been complied with.

Appeal 42(13), (13a)

A committee of adjustment decision may be appealed within 21 days after the sending of the notice of decision. The applicant, the Minister or any other person, may launch an appeal by delivering to the secretary-treasurer of the committee either personally or by registered mail, a notice of appeal accompanied by the fee prescribed under the Ontario Municipal Board Act. (The current fee is \$25.)

Upon receipt of a notice of appeal, the secretary-treasurer must forward the notice and the fee by registered mail to the Ontario Municipal Board, together with all relevant documents.

Hearing on Appeal 42(15)-(17)

The Ontario Municipal Board sets a date and place for a hearing on an appeal and notifies the appellant, the applicant, the secretary-treasurer of the committee and any other persons as the Board sees fit. The Board may dismiss the appeal or may make any decision that the committee could have made. Awarding of costs on the appeal are in the Board's discretion.

Notice of Appeal Decision 42(18), (19)

When the Ontario Municipal Board makes an order on an appeal, a copy is sent to the applicant, the appellant and the secretary-treasurer of the committee. The latter must in turn file a copy of the order with the clerk of the municipality.

BY-LAW RE PARK-LAND CONVEYANCE

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BY-LAW RE PARK-LAND CONVEYANCE (35b)

By-Law for 5% Conveyance 35b(1)

A municipal council may pass a by-law requiring a developer to give to the municipality for park purposes up to 5 percent of the land he proposes to develop or redevelop for residential purposes. This condition may be imposed on development or redevelopment in the entire municipality or in any defined area or areas.

Alternative Park Requirement 35b(2)-(4)

As an alternative to taking 5 percent of the land area, council may pass a by-law relating the park land requirement to the number of dwelling units to be built on the land. The maximum amount that may be required is one acre for every 120 dwelling units. This alternative is only available to a municipality having an official plan containing provisions relating to park land requirements, approved by the Minister since the introduction of this clause in the legislation in 1973.

Use and Sale of Land 35b(5)

Land conveyed to the municipality for park purposes must be used for park purposes or for such other purposes as may be approved by the Minister, but may be sold with the Minister's approval within five years of the conveyance and without the Minister's approval thereafter.

Cash in Lieu of Conveyance 35b(6)

A municipal council may accept the cash value of the land instead of a park conveyance. Section 33(11) of The Planning Act applies to these funds, which means that they must be placed in a special account reserved for park land acquisition. These funds may, with the Minister's approval, also be used for the acquisition of land for other public purposes or for the improvement of park lands.

Excepted Lands 35b(7)

A park conveyance by-law is not applicable to lands for which park land or cash in lieu had previously been conveyed to the municipality at the time of subdivision.

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REDEVELOPMENT (22-24)

Designation of a Redevelopment Area 22(2)

The council of a municipality that has an official plan may, by by-law and with the approval of the Minister, designate a redevelopment area, which may comprise the whole or any part of the municipality covered by the official plan.

No redevelopment area may be altered or dissolved without the Minister's approval.

Acquisition and Clearance of Land 22(3)

When a by-law to designate a redevelopment area has been passed and approved, the municipality may, with the Minister's approval,

- a. acquire land within the redevelopment area;
- b. hold land acquired before or after the passing of the by-law within the redevelopment area; and
- c. clear, grade or otherwise prepare the land for redevelopment.

Withdrawal of Minister's Approval 22(4)

If, at any time before a redevelopment plan for a redevelopment area has been approved by the Minister, the Minister is not satisfied with the progress made by the municipality in acquiring land or in preparing a redevelopment plan, he may withdraw his approval and thereupon the designating by-law ceases to have effect and the redevelopment area ceases to exist.

Adoption of Redevelopment Plan 22(5) and (6)

When a by-law to designate a redevelopment area has been passed and approved, the council may, with the Minister's approval, adopt by by-law a redevelopment plan. No such plan may be approved by the Minister unless it conforms to the Official Plan.

Amendment of Redevelopment Plan 22(7)

A redevelopment plan may be amended by by-law, with the approval of the Minister.

Powers Re Building and Re Land 22(8)

For the purpose of carrying out any feature of a redevelopment plan, the municipality may, with the Minister's approval,

- a. construct, repair, rehabilitate or improve buildings and sell, lease or otherwise dispose of such buildings and the land appurtenant to them; and
- b. sell, lease or otherwise dispose of any land in the redevelopment area to any person or governmental authority for use in conformity with the redevelopment plan.

Grants or Loans to Owners 22(8a)

The municipality may make grants or loans to property owners in a redevelopment area to pay for all or part of the cost of rehabilitating properties in conformity with the redevelopment plan. Such loans may be recovered, with interest, over a period of time as payments added to the municipal tax bill. A certificate describing the loan may be registered against the land in the registry or land titles office, and a subsequent certificate may be registered to record that the loan has been repaid in full.

Sale and Lease of Land in a Redevelopment Area 22(9)

If the municipality disposes of land or buildings in a redevelopment area before a zoning by-law or zoning by-law amendment is passed to regulate development, in accordance with the redevelopment plan, the person or authority acquiring the property must sign an agreement with the municipality that he will maintain the property in conformity with the redevelopment plan.

However, the municipality may, with the Minister's approval, lease land or buildings during the period of the redevelopment plan for any purpose whether or not it conforms to the redevelopment plan, for a term of not more than three years.

Agreements for Special Studies (23)

With the Minister's approval, a municipality may enter into an agreement with any governmental authority or agency for the carrying out of studies relating to the physical condition of the municipality. (Housing condition studies, urban renewal studies, etc.)

Grants in Aid of Redevelopment (24)

The Minister, with cabinet approval, may enter into an agreement with a municipality to help pay for the redevelopment of a redevelopment area, or to pay or help pay for studies to select a redevelopment area.

MAINTENANCE AND OCCUPANCY

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MAINTENANCE AND OCCUPANCY (36)

Authority for a By-Law 36(1)-(3) and (23)

If a municipality has an approved policy relating to property conditions, it may pass a maintenance and occupancy by-law. The approved policy would normally form part of the official plan but if there is no official plan, the council may adopt a policy statement on property conditions and occupancy, and submit it to the Minister for approval.

A maintenance and occupancy by-law prescribes standards and prohibits the use of property that does not conform to the standards. It may require all sub-standard properties to be repaired and made to conform to the by-law, or else to be torn down and the site to be levelled.

The by-law may apply to an entire municipality or to any portion of it and it must provide for the establishment of a property standards committee to hear appeals.

A maximum penalty of \$500 may be imposed on a property owner for each day he is in contravention of an order that is final and binding.

Inspection 36(4) and (5)

An authorized property standards officer may, in the course of his duties, enter and inspect any property at all reasonable times and upon producing proper identification. However, he may not enter any place used as a dwelling without the consent of the occupier unless he has a search warrant.

Notice of Violation 36(6)

If, after inspection, a property is found by a property standards officer to be below standard, the officer must serve notice on the owner describing the deficiencies. The notice must either be served personally or be sent by registered mail to the owner and to all persons having an interest in the property, such as mortgage holders. Occupants of the property may also receive a copy of the notice. If he is unable to serve notice on the owner the officer may placard the property with the notice in a conspicuous place.

Violation Order 36(7), (8), (9) and (10)

After giving the owner an opportunity to appear before the officer and make representations regarding the matters described in the notice, the officer may serve him with an order, either personally or by registered mail, or failing that, by placarding the property. The order must describe the repairs to be effected and give a time limit for compliance and also for the lodging of an appeal. It must state that the municipality may carry out the repairs at the owner's expense if he does not comply within the specified time. The order may be registered in the registry office or land titles office and may subsequently be discharged by a certificate from the municipal clerk when the requirements have been met.

Property Standards Committee 36(11)-(16)

A property standards committee is established by the municipal council to hear appeals from the maintenance and occupancy by-law. It is composed of not fewer than three ratepayers of the municipality who hold office for such terms as may be set out in the maintenance and occupancy by-law. A member or employee of council or an employee of a local board other than a teacher is not eligible. The members elect a chairman and make provision for a secretary who must keep all records on file. They may receive compensation as provided by council.

A majority of the committee constitutes a quorum and the committee may adopt its own rules of procedure.

Appeal to the Committee 36(17) and (18)

When an owner or occupant is not satisfied with the terms of an order, he may appeal to the property standards committee by sending notice of appeal by registered mail to the secretary, within 14 days after service of the order. If no appeal is launched within the 14 day period, the order is considered to be confirmed.

The committee must hear the appeal and has the same powers as the property standards officer; it may confirm, quash or modify the order and it may extend the time for complying with the order.

Appeal from a Committee Decision 36(19)

A decision of the property standards committee may be appealed to

judge of the county or district court, by notifying the municipal clerk in writing and by applying for an appointment within 14 days of the committee's decision. The appellant may be the owner or the municipality or any person affected by the order. The judge appoints a time for a hearing and he has the same powers as the committee. His decision is final and binding.

Power of Municipality to Repair or Demolish 36(21)

If the owner or occupant of property fails to comply with an order, the municipality has the right to demolish or repair the structure and is not liable to compensate the owner or anyone else by reason of such actions.

Certificate of Compliance 36(22)

At the request of the owner, the property standards officer must issue a certificate of compliance, if upon inspection the property complies with the maintenance and occupancy by-law. The municipality may prescribe a fee payable for a certificate of compliance issued at the owner's request. The officer may also issue a certificate on his own initiative, but no fee may then be imposed.

Grants of Loans for Repairs 37(1)-(3)

When a maintenance and occupancy by-law is in force, council may pass a by-law providing for the making of loans to persons who have received a notice to undertake repairs or clear their property. The amount of these loans, with interest, may be recoverable over a period of time as if they were part of municipal property taxes. The municipal clerk is required to register in the registry or land titles office a certificate showing the amount loaned and the rate of interest. When the loan has been repaid in full, the clerk must register another certificate to that effect, thereby discharging the charge or lien against the property. The by-law may also provide for making grants under similar circumstances.

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DEMOLITION CONTROL (37a)

Designation of Demolition Control Areas 37a(2)

When a maintenance and occupancy by-law is in force in a municipality, the council may designate any area affected by the by-law as an area of demolition control. No residential property may then be demolished in whole or in part in the demolition control area, except under a permit issued by the council.

This section is included in the Act to give a council some control over the premature demolition of sound housing stock.

Demolition Permit Where No New Building Permit Has Been Issued 37a(3)

When no new building permit has been issued by the council, a demolition permit for an old building on the same site may either be issued or refused.

Appeal to Ontario Municipal Board 37a(4) and (5)

Where an applicant has been refused a demolition permit or where council has taken no action within one month of the application, he may appeal to the Ontario Municipal Board and the Board must hear the appeal. Its decision is final. Notice of the appeal must be given in accordance with whatever directions the Board may give.

Demolition Permit Where New Building Permit Has Been Issued 37a(6) and (7)

When a building permit for a new building has been issued by the council, a demolition permit for an old building on the same site may not be refused. However, the permit may be issued on the condition that the new building must be substantially completed within a certain time period, not less than two years from the demolition. If the condition is not fulfilled by the applicant, the municipality is entitled to collect a sum not exceeding \$20,000 per dwelling unit in the old building, and this sum is recoverable in the same manner as municipal taxes and is a lien or charge on the property.

Relief From Conditions of Demolition Permit 37a(10) and (11)

If the condition subsequently appears too onerous, the developer may apply to council for relief, not less than 60 days before the expiration of the time for completion of the new building. Council may reject the application or may extend the time limit or may relieve the applicant from the obligation to build a new building.

Appeal to Ontario Municipal Board 37a(9) and (12)

If he is dissatisfied with the conditions imposed by council on the demolition permit, an applicant may appeal to the Ontario Municipal Board and the Board must hear the appeal. Its decision is final.

An applicant is also entitled to appeal to the Ontario Municipal Board if he is not satisfied with council's response to his request for relief from the conditions of the demolition permit, or if council neglects to make a decision within one month of the application for relief.

Enforcement 37a(13)

Demolition in violation of a demolition control by-law is punishable by a fine of up to \$20,000 per dwelling unit if the property is partially or totally destroyed, or by imprisonment for up to 6 months, or both.

Standards for Health and Safety Remain in Force 37a(14)

The provisions of a demolition control by-law do not absolve property owners from compliance with any by-law or provincial Act relating to the health and safety of the occupants of buildings and structures.

Demolition Permit Application Delays Enforcement or Maintenance By-Law 37a(15)

An application for a demolition permit operates to delay any proceedings that may have been taken by a council against a property owner to enforce a maintenance and occupancy by-law. Until the council disposes of the demolition permit application or until the Ontario Municipal Board has dealt with an appeal, a maintenance and occupancy by-law may not be enforced against that property.

Separate Wrecking Permit Not Required 37a(16)

If a person has obtained a demolition permit required by a demolition control by-law, it is not necessary to obtain a separate wrecking permit that may be required by a building by-law. However, the holder of a demolition permit must comply with any regulations that may be in effect pursuant to the provisions dealing with wrecking and removal of buildings in the building by-law.

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MINISTER'S ORDER (32)

Zoning and Subdivision Control 32(1), 32(7)

The Minister may, by order, exercise any of the zoning and subdivision control powers of a municipal council with respect to any land in Ontario. In contrast with a municipal zoning by-law, a minister's zoning order does not require the approval of the Ontario Municipal Board. A minister's order may be revoked or amended by another order.

Minor Variances 32(2)

The Minister may also exercise the powers of a committee of adjustment described in Sections 42(1) and 42(2). (He may allow minor variances from the order provisions, etc.) He is not bound by the provisions of sections 42(4) to 42(13), however, which means that he is not obliged to hold a hearing within 30 days and his decisions are not subject to appeal.

Order Prevails Over Local By-Law 32(3)

In the event of a conflict between a zoning order and a municipal zoning by-law, the order prevails to the extent of such conflict, but in all other regards, the by-law remains in full force.

Zoning Order to Conform with Official Plan 32(4)

Where there is an official plan in effect, the Minister's zoning order must not conflict with it.

Notice 32(5) and (6)

No notice or hearing is required prior to the making of an order, but the Minister is required to give notice of his order within 30 days of making it. Prior to amending or revoking an order, the Minister must give notice in whatever manner he considers appropriate and must allow enough time to permit the submission of representations.

An order deeming a plan of subdivision not to be a registered plan must be registered in the proper registry or land titles office. A duplicate or certified copy must be lodged in the office of the clerk of each affected municipality or, if the land affected is in unorganized territory, in the proper land titles or registry office.

Application to Amend a Zoning Order 32(9) - 32(13)

Where an application is made to amend or revoke a minister's zoning order, the Minister may request the Ontario Municipal Board to hold a hearing on the application. (The Minister is obliged to refer the application to the O.M.B. if the applicant so requests.) The Minister then gives notice of the application and the hearing in such a manner and to such persons, as the Ontario Municipal Board directs. After hearing any objections that may be made, the Ontario Municipal Board submits a report to the Minister, setting out its findings and recommendations. After considering the report, the Minister may either amend the order or refuse to amend it and his decision is final.

Penalty 32(14)

Every person who contravenes a minister's zoning order is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Deeming Order Like Deeming By-Law 32(15)

A minister's order deeming a plan of subdivision not to be a registered plan has the same effect as a by-law passed by a municipal council to deem a plan of subdivision not to be a registered plan.

Minister's Order to Legalize Conveyances

See Section 29a, under subdivision, on page 26.

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DELEGATION OF MINISTER'S POWERS (44b-44d, 30a, 30b)

Authority to Delegate (44b), (44c)

Upon the request of a regional, district or metropolitan council, the Minister may delegate any of his authority under this Act to that council. Where the Minister has delegated authority to a council, it acquires all his powers, rights and responsibilities, including the option of referring any matter to the Ontario Municipal Board.

In addition to his authority under The Planning Act, the Minister may also delegate his authority

- to approve descriptions under section 24 of The Condominium Act;
- to approve by-laws altering, diverting or closing roads in registered plans under section 443(8) of The Municipal Act;
- to approve under section 450 of The Municipal Act the laying out of highways of less than 66 feet or more than 100 feet, and
- to consent to the making of judge's orders under section 86(4) of The Registry Act, amending registered plans of subdivision that were approved by the Minister.

The Minister may make any delegation of his powers subject to such conditions as he may by order provide. He may also withdraw the delegation, either with respect to a particular application or to all applications following the withdrawal.

The council may in turn delegate any such authority, other than the approval of official plans and their amendments, to an appointed officer, and may subject such delegation to conditions.

In theory, the council of any city, town, village, township or county may also acquire the Minister's powers by delegation, provided it first has been designated by order of the Minister as being eligible to assume such powers.

Notice of Decision When Minister's Power Delegated 44d(1)

Where a decision is made by a council or an appointed officer, under authority delegated by the Minister, notice of that decision must be sent to the applicant and to each person having made a written request for notice of the decision.

Appeal to Ontario Municipal Board 44d(3)-(7)

The applicant or any person who requested written notice of a decision may appeal that decision to the Ontario Municipal Board, within 21 days after the day on which the notice was sent out. The notice of appeal must be served personally or be sent by registered mail to the clerk and must be accompanied by the Board's fee. The right to appeal does not apply to the final approval of a plan of subdivision which has received draft approval.

The Ontario Municipal Board must hold a hearing when an appeal has been launched and must give notice to the applicant, the clerk of the municipality responsible for the decision, and to such other persons as the Board sees fit. The Board may dismiss the appeal or make any decision that the council or the appointed officer could have made.

Decision Must Await Approval 44d(2)

In order to give an opportunity for appeal from the decision of a council or appointed officer, an application may not be approved by that council or officer until the time for appeal has expired and any appeal has been disposed of.

Delegation of Consent-Granting Power to a Planning Board in a Territorial District (30a)

In a territorial district, the Minister may delegate his power to grant land severance consents to a planning board of a planning area in the district. When this power has been delegated, the planning board must follow similar procedures as a committee of adjustment. The delegation may be subject to any conditions as may be provided by the Minister's order.

Delegation of Consent-Granting Power to a Land Division Committee in a Territorial District (30b)

See "Territorial District" on page 33.

MOBILE HOMES AND MOBILE HOME PARKS (35c)

This Section takes effect on June 1, 1977 and will apply to mobile homes established from that date on. Meanwhile, mobile homes and mobile home parks are governed by whatever local regulatory by-laws may be in effect. However, many areas of the Province still have only minimal regulations and Section 35c ensures that groups of mobile homes, whether in a bona-fide mobile home park or not, are adequately controlled throughout Ontario. This is done as follows:

Individual mobile homes may be located on lots subject to similar restrictions as other dwellings, provided that not more than one mobile home is located on a lot.

Mobile home parks, or any grouping of mobile homes on a single parcel of land, may only be developed or expanded on land specifically zoned to permit such use of land.

The provisions of existing by-laws regulating mobile homes will not be set aside when this Section comes into effect, but areas previously without zoning controls on mobile homes will automatically come under control.

Contravention of this regulation may result in a fine of up to \$1,000. Legal action to enforce the provision may be launched by the Minister, by the municipality or an adjoining municipality, or by a ratepayer or a resident of unorganized territory in the area.

BUILDING BY-LAW (38)

In contrast with a zoning by-law, a building by-law deals with the strength and safety of construction, the provision of fire escapes, the regulation of wiring in buildings, the control of termites, etc.

Since December 31, 1975, new construction is subject to the Ontario Building Code throughout Ontario. By-laws passed pursuant to Section 38 of The Planning Act now apply only to existing buildings and minor additions and to used mobile homes. The local building inspector should be consulted for an interpretation of what constitutes a substantial addition. No definition is given in the legislation.

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GENERAL (43-44a)

Court Action to Restrain By-Law Infraction (43)

The contravention of any by-law implementing an official plan, such as a zoning by-law, and any contravention of Section 19 which requires by-laws and public works to conform to the official plan, if there is one, may be restrained by a court action initiated by

- a ratepayer of the municipality,
- the planning board, or
- any municipal council in the planning area where the contravention occurred.

Court Action to Restrain Infraction of Minister's Order (43)

The contravention of a Minister's zoning or subdivision control order (Section 32) may be restrained by a court action initiated by

- a ratepayer of the municipality or of an adjoining municipality,
- the municipal council or the council of the adjoining municipality, or
- the Minister.

Penalties and Enforcement of By-Laws (40)

Part XXI of The Municipal Act applies to zoning and building by-laws and maintenance and occupancy by-laws. This means that council has the power to impose fines and enforce performance of any conditions for which it has authority. If such conditions are not carried out by the person required to do so, council may do the work for him and may recover the costs in court or add them to his tax bill.

Reference to O.M.B. of Application for Minister's Approval (44, 44a)

In any matter where the Minister's approval or consent is required under the Act, the Minister may refer the matter to the Ontario Municipal Board, either on his own initiative or at the request of an applicant or an objector. Upon application for a referral, the Minister is obliged to comply unless he deems that the request is frivolous or not in good faith or made with the purpose of delay. The approval or consent of the Ontario Municipal Board has the same force and effect as the Minister's approval or consent.

The only exception to the above provision for referral to the O.M.B. is for a draft plan of subdivision which has received draft approval

under Section 33(12) of the Act: the Minister's final approval under Section 33(14) may not be referred to the O.M.B.

A matter referred to the O.M.B. may be taken back by the Minister at any time prior to a decision, but if the referral had been made at someone's request, the Minister could only take it back at the request of the same person and with the concurrence of any other persons who might have requested the referral.

Minister's Signature Proof of Compliance with the Act (44(2))

The Minister's signature on an approval or consent is conclusive evidence that the provisions of the Act leading to such approval or consent have been complied with. Similarly, the Ontario Municipal Board's seal is conclusive evidence when the approval or consent has been referred to the Board.

Power to Grade Acquired Lands (26)

When a municipality has acquired or holds land for any purpose authorized by The Planning Act, it may clear, grade or otherwise prepare the land for the authorized purpose.

Exchange of Land (27)

In order to acquire land for any purpose authorized by The Planning Act, a municipality may use land it already owns in exchange or as part payment in exchange for the land it seeks to acquire.

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